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HOUSE BILL 765

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO TOBACCO; CLARIFYING THE STATUTORY CAP FOR
NONPARTICIPATING MANUFACTURERS; AMENDING AND ENACTING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-4-13 NMSA 1978 (being Laws 1999,
Chapter 208, Section 2) is amended to read:

"6-4-13. REQUIREMENTS. --

A. Any tobacco product manufacturer selling
cigarettes to consumers within the state (whether directly or
through a distributor, retailer or similar intermediary or
intermediaries) after the date of enactment of this act shall
do one of the following:

(1) become a participating manufacturer (as
that term is defined in Section II(jj) of the master settlement

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1 agreement) and generally perform its financial obligations
2 under the master settlement agreement; or

3 (2) place into a qualified escrow fund by
4 April 15 of the year following the year in question the
5 following amounts (as such amounts are adjusted for inflation):

6 (a) 1999: \$.0094241 per unit sold after
7 the date of enactment of this act;

8 (b) 2000: \$.0104712 per unit sold;

9 (c) for each of 2001 and 2002:
10 \$.0136125 per unit sold;

11 (d) for each of 2003 through 2006:
12 \$.0167539 per unit sold; and

13 (e) for each of 2007 and each year
14 thereafter: \$.0188482 per unit sold.

15 B. A tobacco product manufacturer that places funds
16 into escrow pursuant to Paragraph (2) of Subsection A of this
17 section shall receive the interest or other appreciation on
18 such funds as earned. Such funds themselves shall be released
19 from escrow only under the following circumstances:

20 (1) to pay a judgment or settlement on any
21 released claim brought against such tobacco product
22 manufacturer by the state or any releasing party located or
23 residing in the state. Funds shall be released from escrow
24 under this paragraph:

25 (a) in the order in which they were

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1 placed into escrow; and

2 (b) only to the extent and at the time
3 necessary to make payments required under such judgment or
4 settlement;

5 (2) to the extent that a tobacco product
6 manufacturer establishes that the amount it was required to
7 place into escrow on account of units sold in the state in a
8 particular year was greater than [the state's allocable share
9 of the total payments that such manufacturer would have been
10 required to make in that year under the master settlement
11 agreement (as determined pursuant to section IX(i)(2) of the
12 master settlement agreement, and before any of the adjustments
13 or offsets described in section IX(i)(3) of that agreement
14 other than the inflation adjustment)] the master settlement
15 agreement payments, as determined pursuant to Section IX(i) of
16 that agreement including after final determination of all
17 adjustments, that such manufacturer would have been required to
18 make an account of such units sold had it been a participating
19 manufacturer, the excess shall be released from escrow and
20 revert back to such tobacco product manufacturer; or

21 (3) to the extent not released from escrow
22 under Paragraphs (1) or (2) of this subsection, funds shall be
23 released from escrow and revert back to such tobacco product
24 manufacturer twenty-five years after the date on which they
25 were placed into escrow.

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1 C. Each tobacco product manufacturer that elects to
2 place funds into escrow pursuant to Paragraph (2) of Subsection
3 A of this section shall annually certify to the attorney
4 general that it is in compliance with Paragraph (2) of
5 Subsection A of this section and Subsection B of this
6 section. The attorney general may bring a civil action on
7 behalf of the state against any tobacco product manufacturer
8 that fails to place into escrow the funds required under
9 Paragraph (2) of Subsection A of this section and Subsection B
10 of this section. Any tobacco product manufacturer that fails
11 in any year to place into escrow the funds required under
12 Paragraph (2) of Subsection A of this section and Subsection B
13 of this section shall:

14 (1) be required within fifteen days to place
15 such funds into escrow as shall bring it into compliance with
16 Paragraph (2) of Subsection A of this section and Subsection B
17 of this section. The court, upon a finding of a violation of
18 Paragraph (2) of Subsection A of this section or Subsection B
19 of this section, may impose a civil penalty to be paid to the
20 state general fund in an amount not to exceed five percent of
21 the amount improperly withheld from escrow per day of the
22 violation and in a total amount not to exceed one hundred
23 percent of the original amount improperly withheld from escrow;

24 (2) in the case of a knowing violation, be
25 required within fifteen days to place such funds into escrow as

. 145475. 1ms

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1 shall bring it into compliance with Paragraph (2) of Subsection
2 A of this section and Subsection B of this section. The court,
3 upon a finding of a knowing violation of Paragraph (2) of
4 Subsection A of this section or Subsection B of this section,
5 may impose a civil penalty to be paid to the state general fund
6 in an amount not to exceed fifteen percent of the amount
7 improperly withheld from escrow per day of the violation and in
8 a total amount not to exceed three hundred percent of the
9 original amount improperly withheld from escrow; and

10 (3) in the case of a second knowing violation,
11 be prohibited from selling cigarettes to consumers within the
12 state (whether directly or through a distributor, retailer or
13 similar intermediary) for a period not to exceed two years.

14 Each failure to make an annual deposit required under
15 Paragraph (2) of Subsection A of this section shall constitute
16 a separate violation. "

17 Section 2. A new Section 6-4-13.1 is enacted to read:

18 "6-4-13.1. [NEW MATERIAL] SEVERABILITY. --If the 2003
19 amendment to Paragraph (2) of Subsection B of Section 6-4-13
20 NMSA 1978 is held by a court of competent jurisdiction to be
21 unconstitutional, then Paragraph (2) of Subsection B of Section
22 6-4-13 NMSA 1978 shall be deemed to be repealed in its
23 entirety. If Subsection B of Section 6-4-13 NMSA 1978 is
24 thereafter held by a court of competent jurisdiction to be
25 unconstitutional, then the 2003 amendment shall be deemed

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1 repealed and Paragraph (2) of Subsection B of Section 6-4-13
2 NMSA 1978 shall be restored as if no such amendment had been
3 made. Neither a holding of unconstitutionality nor the repeal
4 of Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978
5 shall affect, impair or invalidate any other portion of
6 Sections 6-4-12 and 6-4-13 NMSA 1978, or the application of
7 such sections to any other person or circumstance, and such
8 remaining portions of Sections 6-4-12 and 6-4-13 NMSA 1978
9 shall at all times continue in full force and effect. "

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